IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

RSA.No. 293 of 2007()

AS.39/1997 of SUB COURT, TIRUR
OS.2/1992 of M.C.,PARAPPANANGADI

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: APPELLANTS/APPELLANTS/LRS OF ORIGINAL PLAINTIFF

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1. NECHICHINAKKAL SAMI,
   AGED 53 YEAR, S/O.KELU.

2. NECHICHINAKKAL BALAN,
   AGED 5 YEARS, S/O.KELU.

3. NECHICHINAKKAL GOPALAKRISHNAN,
   S/O.KELU.

4. NECHICHINAKKAL VASUDEVAN,
   S/O.KELU,

5. NECHICHINAKKAL RADHAKRISHNAN,
   S/O.KELU.
   (ALL ARE RESIDING AT: A.R.NAGAR AMSOM,DESOM IN
   TIRURANGADI TALUK).

BY ADV. SRI.C.P.CHANDRASEKHARAN (CALICUT)
SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. CHALILAKATH KUNHAMMEDKUTTY'S CHILDREN :

   AHAMMEDUKUTTY, AGED 54 YEARS.

2. MOIDEENKUTTY,
   AGED 52 YEARS,

3. MOOSAKOYA,
   AGED 50 YEARS,

4. MOHAMMED KUTTY,
   AGED 47 YEARS.

5. UMMER,
AGED 45 YEARS.

6. SAIDALAVI,
AGED 40 YEARS.
(ALL ARE RESIDING AT A.R.NAGAR AMSOM,
AND PUKAYOOR DESOM IN TIRURANGADI TALUK).

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON 06/07/2007 PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 293 OF 2007

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DATED THIS THE 6TH DAY OF JULY, 2007

JUDGMENT

Legal heirs of the **p**laintiff in O.S. 2 of 1992 on the file of Munsiff Court, Parappanangadi are the appellant. Defendants are respondents. Plaintiff instituted the suit seeking a decree for permanent prohibitory injunction contending that plaint schedule property originally belonged to his predecessors on “adima “ right and on their death it is in his possession and subsequently he purchased jenmom right from the Land Tribunal under Ext.A1 purchase certificate and he has been in possession of the property and respondents have no manner of right or possession over the same. Respondents resisted the suit contending that plaintiff is not in possession of the property and has no right over the property and therefore plaintiff is not entitled to the decree sought for.

2. Learned Munsiff on the evidence found that identity of the plaint schedule property has not been established. Though reliance was placed on Ext.A1 purchase certificate, learned Munsiff, on the basis of the reports submitted by the Commissioner, held that plaint schedule property is not properly

identified and without identifying the property plaintiff is not entitled to the decree sought for. The suit was dismissed. Appellants being legal heirs of deceased plaintiff, challenged the decree and judgment before Sub Court, Tirur in A.S.39 of 1997. Learned Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard. The argument of the learned counsel was that Ext.A1 purchase certificate is the conclusive proof of title as provided under Section 72(K) of the Kerala Land Reforms Act and therefore courts below should have upheld the case of possession claimed by the plaintiff and the decree should have been granted.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. In a suit for injunction, plaintiff has to establish not only his possession but also the identity of the plaint schedule property. Courts below in the light of the report of the Commissioner and evidence and the boundaries seen in Ext.A1 purchase certificate and that of the plaint schedule property held that the property is not the same and appellant is not entitled to the decree for injunction without

proper identification of the property. That factual findings of the court below cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-